

267993

McMAHON, DeGULIS & HOFFMANN

LLP, Attorneys at Law

Michael S. McMahon

Mia T. Lombardi

The Caxon Building

216 621-1312 phone

Gregory J. DeGulis*

Suzanne P. Wiley

Suite 650

216 621-0577 fax

David S. Hoffmann

812 Huron Road

*also licensed in New York
and Massachusetts

Cleveland, Ohio

44115-1126

Writers Extension: 101
Hoffmann@mchb-law.com

February 14, 2001

By facsimile and regular U.S. mail

Terry S. Casey
14015 Park Drive
Suite 109
Tomball, TX 77375

Marcus A. Martin
522 Highland Ave.
Boulder, CO 80302

Re: Agreement between NL Industries, Inc. and Bredt-Zanick LLC and Northern Ohio Lumber & Timber Co.
Master Metals Site
Cleveland, OH

Dear Messrs. Casey and Martin:

Enclosed is a draft Agreement between the above-captioned parties. I have taken the Agreement drafted by Mr. Martin and forwarded to me by Mr. Casey on November 2, 2000 and re-drafted it to reflect the current understandings reached by my clients, Bredt-Zanick and Northern Ohio Lumber, and Mr. Casey at recent meetings here in Cleveland.

This Agreement represents a critical milestone not only to my clients, but other interested stakeholders, including the City of Cleveland and the State of Ohio. Therefore, I am sending a copy of this cover letter to representatives of each of these stakeholders to keep them abreast of the negotiations between my clients and NL Industries, Inc.

Please note that this project has reached a critical stage where timing is critical in order for transfer of the property to proceed as planned. My clients can no longer endure unnecessary delay toward completion of this project. Accordingly, we request that you review this Agreement and respond with any questions or comments by Friday, February 16. If we have not heard from you by that time, we will assume that the Agreement meets with your approval and that your client will execute the Agreement by no later than Friday, February 23.

Thank you for your immediate attention.

Terry Casey and Marcus Martin
February 14, 2001
Page 2

Sincerely,

McMAHON, DeGULIS & HOFFMANN LLP

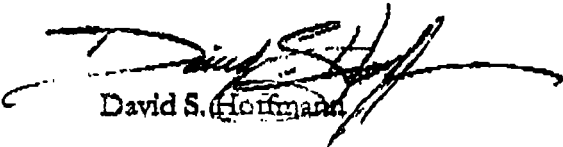
David S. Hoffmann

C. w/o enc.

Vince Lombardi, Ohio Dept. of Development
Steve Love, Ohio EPA
Fran Migliorino, Governor Taft's Office
Jim Pressler, Flats-Oxbow Association
Kevin Schmotzer, City of Cleveland Dept. of Economic Development
Chris Warren, City of Cleveland Dept. of Economic Development

Sincerely,

McMAHON, DeGULIS & HOFFMANN LLP


David S. Hoffmann

AGREEMENT

This Agreement is made this ____ day of _____, 2001 between NL Industries, Inc. ("NL"), Bredt-Zanick LLC ("BZ"), and the Northern Ohio Lumber & Timber Co. ("NOLTCO") regarding the former Master Metals, Inc. property located at 2850 West Third Street, Cleveland, Ohio ("Site") (A map depicting the Site is attached as Exhibit A).

WHEREAS, NL is a Texas corporation which manufactures pigments for commercial and industrial users and is the former owner of the Site;

WHEREAS, BZ is an Ohio limited liability corporation and is, or will be, the owner of the Site;

WHEREAS, NOLTCO is an Ohio corporation which sells lumber and timber to commercial and retail clients and is, or will be, leasing the Site from BZ;

WHEREAS, BZ and NOLTCO intend to execute a Prospective Purchaser Agreement ("PPA") with U.S. EPA, which will provide limited liability protection to BZ and NOLTCO from historic contamination on the Site.

WHEREAS, BZ has agreed to take title to the Site, and BZ and NOLTCO have agreed to perform post-closure operation and maintenance ("O&M") at the Site and to use the Site exclusively for the purpose of operating NOLTCO's lumber business in order to secure NL's commitments herein;

WHEREAS, NL and certain other named respondents (collectively, "Respondents") implemented an Administrative Order on Consent, Docket No. V-W-97-C-402 ("AOC I") under 42 U.S.C. §9606 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") pursuant to which the respondents performed a removal action and engineering evaluation and cost analysis ("EECA") at the Site;

WHEREAS, the Respondents are also signatories to the Administrative Order on Consent, Docket No. _____ ("AOC II") pursuant to which the Respondents will pay for and implement the work described in U.S. EPA's Action Memorandum dated September 30, 1999, as amended by U.S. EPA's Action Memorandum dated September 22, 2000 ("Work") (the Amended Action Memorandum is hereinafter referred to as the "Amended AM") (Copies of each of the foregoing are attached as Exhibit B (AOC II), Exhibit C (September 30, 1999 Action Memorandum) and Exhibit D (September 22, 2000 Action Memorandum), respectively);

WHEREAS, the Amended AM changed the original removal action selected for the Site from, among other changes, a soil and vegetative cap to an asphalt cap in order to facilitate the reuse of the Site by NOLTCO for its business and increased the overall cost of the remedy, including post-closure O&M;

WHEREAS, NL retained ENTACT, an environmental remediation contractor who has offered a lump sum contract to perform the Work (excluding post-closure O&M) (A copy of ENTACT's proposal is attached as Exhibit E);

WHEREAS, NL, BZ and NOLTCO desire to cooperate in the implementation of, and payment for, the Work and to set forth their respective responsibilities regarding the Work;

WHEREAS, without admitting any fact, responsibility, fault, or liability in connection with the Site, NL, BZ and NOLTCO wish to establish a framework for performing the Work and to settle among themselves the costs associated with performing the Work;

NOW THEREFORE, in consideration of the foregoing, NL, BZ and NOLTCO mutually agree as follows:

1. NL shall implement and supervise the Work (excluding post-closure O&M) required pursuant to ACO II. NL shall pay the first \$300,000 and the City of Cleveland, the State of Ohio and BZ shall each pay \$25,000, in that order, for a total of \$75,000. NL shall assume any costs over \$375,000 required to complete the Work (excluding post-closure O&M). The parties to this Agreement agree to indemnify, defend and hold harmless each other for any breach of their respective obligations under this paragraph. So long as there is no breach or default of their respective obligations under this paragraph, each party hereby releases the other party, as well as its successor and permitted assigns, from any claim, damage, cost, fine, or demand relating to the condition of the Site and existing contamination as of the date of this Agreement as well as the Work required pursuant to ACO II.

2. NL shall also pay \$9,600, the estimated cost of post-closure O&M under the September 30, 1999 Action Memorandum, to BZ. BZ shall assume the responsibility for implementation of post-closure O&M required under ACO II and the Amended AM, and shall not seek reimbursement from NL for any costs exceeding \$9,600.

3. BZ and NOLTCO acknowledge that NL is agreeing to implement the Work associated with ACO II, in part, to facilitate BZ's acquisition and NOLTCO's use of the Site for NOLTCO's lumber business and that there will exist certain risks associated with post-remedial conditions at the Site, including the engineered cap, which risks would not otherwise exist if NOLTCO was not to use the Site for its business. Accordingly, NOLTCO agrees that it will use its best efforts not to harm, damage, or in any way impair the cap or any other part of the Site subject to the remedy, and to use its best efforts not to allow its contractors, agents, guests, invitees or any one else over whom it has control to do so. In the event such harm occurs, NOLTCO shall promptly notify NL and U.S. EPA of the nature of the occurrence and shall immediately implement all measures to repair the cap to its original condition. NOLTCO shall be responsible for complying with all terms and conditions of ACO II with regard to the post-closure care and maintenance.

4. NL, BZ and NOLTCO each represent and warrant to each other that each has full power and authority to enter into this Agreement and that this Agreement, when executed and delivered, shall be a valid and binding obligation of the parties.

5. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without a written amendment executed by an authorized representative of each of the parties hereto.

6. This Agreement is binding on the successors of each party. None of the parties to this Agreement may assign this Agreement without the prior written consent of the other parties. In the event of a permitted assignment, the assignee shall assume responsibility for all terms and conditions pursuant to this Agreement.

7. In the event BZ desires to transfer the Site to any other person, BZ shall give NL prior notice of the intended transfer no less than thirty (30) days prior to the proposed transfer. BZ may not transfer the Site unless and until the prospective purchaser agrees to be bound by all the terms and conditions of this Agreement, and such agreement is in a form acceptable to NL in its sole discretion.

8. The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal, unenforceable or in conflict with applicable law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

9. All notices and communications pursuant to this Agreement shall be sent in writing, by first class mail, US postage prepaid, to the following individuals hereby designated by each of the parties as its authorized representative:

To NL: Terry S. Casey
Efficasey Environmental
14015 Park Drive, Suite 109
Tomball, TX 77375

With a copy to: Marcus A. Martin
522 Highland Ave.
Boulder, CO 80302

To BZ: Charles Bredt
7300 Brecksville Road
Independence, OH 44131

With a copy to: David S. Hoffmann
McMAHON, DeGULIS, HOFFMANN &
LOMBARDI LLP
The Caxton Building - Suite 650
812 Huron Road
Cleveland, OH 44115

To NOLTCO: Charles Bredt
Northern Ohio Lumber & Timber Co.
1895 Carter Road
Cleveland, OH 44113

With a copy to: David S. Hoffmann
McMAHON, DeGULIS, HOFFMANN &
LOMBARDI LLP
The Caxton Building - Suite 650
812 Huron Road
Cleveland, OH 44115

10. This Agreement may be executed in several counterparts, all of which when taken together, shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to principles of conflicts of laws.

12. This Agreement contains the entire agreement between the parties on the subject matter hereof, and supersedes all prior discussions, negotiations, understandings or agreements related thereto. No statements made by any party hereto, or agent thereof, not contained herein shall be valid and binding.

13. NL, BZ and NOLTCO participated jointly in the negotiation and drafting of this Agreement. In the event that any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

IN WITNESS WHEREOF, the party to this Agreement whose name is set out below, intending to be legally bound hereby, has executed this Agreement on the date(s) designated below each signature.

NL Industries, Inc.

Witnesses:

By: _____

Its: _____

Date: _____

Bredt-Zanick LLC

By: _____

Its: _____

Date: _____

Northern Ohio Lumber & Timber Co.

By: _____

Its: _____

Date: _____